

STATE OF NORTH DAKOTA
BOARD OF NURSING

IN THE MATTER OF:

State of North Dakota and
the Board of Nursing of the
State of North Dakota

Complainant,

vs.

Jill Jenkins, R.N.

Respondent.

**RECOMMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

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On May 28, 2002, a Complaint was filed with the North Dakota Board of Nursing by its Executive Director, Constance B. Kalanek, Ph.D., R.N., requesting administrative action against Jill Jenkins, a licensed Registered Nurse and a Licensed Practical Nurse in North Dakota. The complaint cites as grounds for administrative action violations of N.D.C.C. § 43-12.1-14(3), (5), and (9).

On September 7, 2002, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On September 23, 2002, the undersigned ALJ was designated to preside as hearing officer.

On September 27, 2002, the ALJ issued a Notice of Hearing. The hearing was held as scheduled on October 21, 2002, in the Office of Administrative Hearings in Bismarck, North Dakota. Special Assistant Attorney General Brian L. Bergeson represented the Board at the

hearing. Also present for the Board were Dr. Kalanek, Julie Schwan, and Pat Hill. The Respondent, Jill Jenkins, was not present at the hearing; neither was Jenkins represented at the hearing. Jenkins was served with the Notice of hearing by Certified mail on October 1, 2002, and is presumed to have adequate notice of the hearing. Further, she had been in contact with Mr. Bergeson discussing possible settlement of this matter, but shortly before the hearing did not return any of Bergeson's calls. The ALJ had no contact with Ms. Jenkins.

Due to the nature of the alleged violations, Mr. Bergeson did not present any witnesses but he did offer nine (9) exhibits, all of which were admitted. Mr. Bergeson especially referred the ALJ to certain portions of some of the nine exhibits. Mr. Bergeson gave oral closing argument. Based on the evidence presented at the hearing and the closing argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. As a result of an earlier Complaint filed against her by the Board, on May 16, 2001, Jill Jenkins signed a document entitled Statement of Facts, Consent to Order, and Waiver ("Consent Order"). Exhibit 1. In the Consent Order Jenkins admits to violations of certain laws of the State of North Dakota by her conduct while working as a registered nurse at the Altru Health System, in Grand Forks, North Dakota, violations of N.D.C.C. § 43-12.1-14(3) and (5), and N.D. Admin. Code § 54-02-07-01.1(5), (6), (7). *Id.* In Consent Order, Jenkins waives her right to a hearing on the allegations of the Complaint. *Id.* In the Consent Order, Jenkins agrees that "[d]uring my period of encumbrance, I shall pay to the Board an encumbrance monitoring fee of Twenty-five dollars (\$25) per quarter." *Id.* VIII (1), (B). Jenkins further agrees that she will

commit no further violations of law, and that if she commits any violations of law during an agreed upon 24-month probationary period, she consents to the Board taking further disciplinary action against her. *Id.* VIII (1), (H). Jenkins further agrees to pay a penalty fee of \$200.00. *Id.* VIII (3). Jenkins further agrees to pay the Board its costs and disbursements assessed pursuant to N.D.C.C. Section 43-12.1-13 in an amount to be certified by the Board's Executive Director. *Id.* VII (4).

2. As a result of Jenkins signing the Consent Order, on May 17, 2001, the Board issued its Findings of Fact, Conclusions of Law, and Order ("Final Order"). The Final Order incorporates all of the provisions of the Consent Order effectively making all that Jenkins agreed and consented to a part of the requirements of the Board's Final Order. Exhibit 2.

3. Pursuant to the Board's Final Order, on June 21, 2001, Dr. Kalanek sent to Jenkins a statement of "Costs Associated with the Disciplinary Process." The statement stated total costs and disbursements of \$347.33, and a penalty fee of \$200.00, indicating a total amount due and owing by Jenkins of \$547.33. Exhibit 3.

4. On July 30, 2001, the Board sent Jenkins an Invoice demanding payment of \$547.33. Exhibit 4.

5. On September 10, 2001, the Board sent Jenkins another Invoice demanding payment of \$547.33. Exhibit 5.

6. On February 15, 2002, Dr. Kalanek sent to Jenkins a Demand for Payment letter demanding payment of the full amount of \$547.33 within 20 days, and stating that a complaint would be filed with the Board alleging a violation of the Board's previous order (the Final Order) if the amount were not timely paid in full. Exhibit 6.

7. Jenkins did not make timely payment of the \$547.33. *See* Exhibit 9.

8. On May 28, 2002, Dr. Kalanek filed a formal Complaint with the Board requesting administrative action against Jenkins because of alleged violations of N.D.C.C. § 42-12.1-14(3), (5), (9). Exhibit 7. Specifically, the Complaint alleges failure to pay the penalty fee of \$200 as required by the Final Order; failure to pay the costs and disbursements duly assessed by the Executive Director of the Board as required by the Final Order; and failure to pay the quarterly encumbrance monitoring fee of \$25 per quarter as required by the Final Order. Specifically, the Complaint alleges violation of N.D.C.C. § 43-12.1-14(3), (5), and (9), having engaged in any practice inconsistent with the standards of nursing practice; having engaged in a pattern of practice or other behavior that demonstrates professional misconduct; and, more directly, having failed to observe and follow the duly adopted standards, policies, directives, and orders of the board, or having violated any other provision of chapter 43-12.1. *Id.*

9. On June 9, 2002, Jenkins sent to Dr. Kalanek a letter in which she enclosed a May 20, 2002 letter to Dr. Kalanek (which Dr. Kalanek did not receive at that time). The June 9 letter states that Jenkins' husband is out of work but that she should be able to pay the bill by the end of June. The May 20 letter states that Jenkins' husband is not working and that she receives only social security as income, and, then, states her monthly costs. Jenkins' also states that she will pay the bill when "things improve." Exhibit 8.

10. As of October 21, 2002, Jenkins has not made the required payment of \$547.33 (\$200 penalty fee and \$347.33 costs and disbursements). Neither has Jenkins paid the quarterly \$25 encumbrance monitoring fee she agreed to pay during the time of her encumbrance. Exhibit 9. The encumbrance monitoring fee owed by Jenkins now totals \$125.00.

CONCLUSIONS OF LAW

1. The evidence presented at the hearing shows that Jenkins by failing to pay the \$200 penalty fee required by the Final Order, by failing to pay the quarterly encumbrance monitoring fee of \$25 per quarter required by the Final Order, and by failing to pay the costs and disbursements required by the Final Order, as duly assessed by the Executive Director of the Board, in the amount of \$347.33, has violated the provisions of N.D.C.C. § 43-12.1-14(3), (5), and (9), most directly, by having failed to observe and follow a duly adopted order (the Final Order) of the Board.

2. The Board has authority to suspend a license to practice nursing in North Dakota for a violation of law listed in N.D.C.C. § 43-12.1-14.

3. The Board has authority to impose a fee, as well as the assessment of costs and disbursements, for violations of N.D.C.C. ch. 43-12.1, in addition to any licensure sanction. N.D.C.C. § 43-12.1-13.

4. Jenkins agreed in the Consent Order to pay the quarterly encumbrance-monitoring fee during the time of her encumbrance.

5. Jenkins agreed in the Consent Order to be subject to further administrative action by the Board as a result of the violations stated in the May 2001 Complaint, if she committed further violations of the law during a 24 month probation period. The 24-month probation period is still in effect at this time. The Final Order was issued May 17, 2001.

RECOMMENDED ORDER

The greater weight of the evidence shows that Jenkins violated the provisions of N.D.C.C. § 43-12.1-14(3), (5), (9) as alleged in the Complaint and proven at the hearing. At the close of the hearing, counsel for the Board recommended that as a result of the violations proven at the October 21, 2002, hearing, Jenkins' license to practice nursing in North Dakota be suspended for a period of two years, Jenkins be fined \$1,000, Jenkins be ordered to pay the costs and disbursements associated with the 2001 and 2002 administrative actions and Jenkins be ordered to pay the quarterly encumbrance monitoring fee of \$25 per quarter, which now totals \$125. The ALJ agrees with the recommendation of counsel and recommends that the Board so Order.

Dated at Bismarck, North Dakota, this 23rd day of October, 2002.

State of North Dakota
Board of Nursing

By: _____
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Administrative Law Judge
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